



Timmerman

The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Nordam
File: B-230655
Date: May 16, 1988

DIGEST

1. Protest that agency delay during its source approval process deprived protester of a reasonable competitive opportunity is denied where the record does not indicate that the agency qualification procedures were unreasonably lengthy.
2. Protest that solicitation should have allowed alternate qualification method through the submission of a first article for testing is untimely when not raised until after the closing date for the submission of initial proposals.

DECISION

Nordam protests the award of a contract to Helicomb International, Inc. under request for proposals (RFP) No. DAAJ09-88-R-0033, issued by the Army Aviation Systems Command (AVSCOM) for 281 cabin roof shell assemblies for the OH-58 helicopter. Nordam believes that it was denied the opportunity to compete for award due to AVSCOM's unreasonable delay in processing Nordam's source approval request. We deny the protest in part and dismiss it in part.

The RFP was issued on October 6, 1987 after publication of a synopsis in the Commerce Business Daily on June 24. Award was restricted to approved sources based on the agency's determination that the cabin roof shell was a bonded component critical to the safety of the helicopter crew. Both the synopsis and the solicitation cautioned offerors that requests for source approval would not be a cause for delay in the award of the requirement. The original closing date was November 6; however, at the request of a potential offeror, AVSCOM issued an amendment extending the closing date to November 13. Award was made on February 23, 1988, to Helicomb International as the low offeror. At the time of award there were two approved

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sources of supply, Helicomb and Bell Helicopter Textron, Inc.; both of which submitted offers. Nordam's request to be added to the source list was approved after award by letter dated March 23.^{1/}

Nordam states that it submitted a source approval request to AVSCOM on October 21, 1987 and contends that it was denied an opportunity to compete for award under this procurement by AVSCOM's unreasonable delay in granting approval after having Nordam's request for more than 140 days. The protester surmises that the delay was due to a lack of advance planning on the agency's part. Nordam also states that it was told by an AVSCOM source approval engineer that award of the contract would be held up until Nordam's source approval request was completed.

The agency asserts that Nordam is in large part responsible for the delay since it did not submit its source approval request until more than 4 months after the synopsis was published. It points out that had Nordam made its request earlier it would more than likely have been approved prior to award since AVSCOM's approval of Nordam's request took 5 months. Additionally, the agency notes that Nordam requested approval not just on the cabin roof shell but on 14 major categories of bonded components totaling approximately 68 individual items. According to the agency, in an attempt to expedite the approval of the cabin roof shell the reviewing engineer agreed with Nordam to separate that component from Nordam's package and treat it as a separate request.

When a contracting agency restricts a contract award to an approved source, it must give nonapproved sources a reasonable opportunity to qualify. 10 U.S.C. § 2319(c) (Supp. III 1985); Vac-Hyd Corp., 64 Comp. Gen. 658 (1985), 85-2 CPD ¶ 2. A protester's allegation that the agency's procedures for approving alternative products or sources take more time than the protester believes is necessary, does not itself, however, constitute the required showing that the agency's procedures failed to provide the protester with a reasonable competitive opportunity. Rotair Industries, Inc., B-223332.2; et al., Mar. 3, 1987, 87-1 CPD ¶ 238.

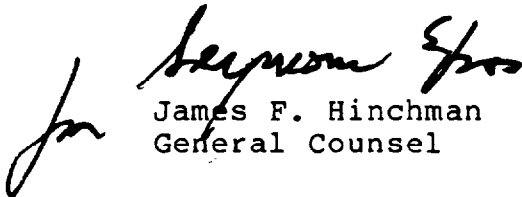
^{1/} In its comments on the agency report, Nordam states that it has not received notification of approval. We have a copy of AVSCOM's letter of March 23 granting approval and have asked the agency to send a copy of the letter to the protester.

We believe AVSCOM has acted properly. There is nothing in the record to indicate that the agency's approval process, which took 5 months, was unreasonably long under the circumstances or that the process was delayed by a lack of advance planning. First, we note that contractors generally should seek qualification in advance and independently of any specific acquisition. Radalab, Inc., B-225662.2, May 15, 1987, 87-1 CPD ¶ 519. In this regard, we agree with the agency that Nordam significantly contributed to its failure to qualify for this procurement because it did not request approval in a timely manner and because it included numerous other items in its request. Further, the record indicates that AVSCOM had to make award in order to prevent depletion of its stock. According to AVSCOM, a shortage of these items would bring the government production line, which is currently in a stop work status for cabin roof shells, to a complete halt. Also the solicitation specifically advised offerors that award would not be delayed because of the source approval process. We think AVSCOM fulfilled the requirement to give nonapproved sources a reasonable opportunity to qualify and we therefore do not object to the award.

With regard to Nordam's contention that an AVSCOM engineer informed it that award would not be made until Nordam's request was approved, AVSCOM has submitted a statement from the engineer which denies that such a remark was made. Moreover, since both the synopsis and the RFP provided that award would not be delayed for source approvals, even if the engineer had made the statement, Nordam's reliance on the oral advice would have been unreasonable. American Hospital Consultants Co., B-226166, Apr. 8, 1987, 87-1 CPD ¶ 386.

Finally, in its comments on the agency report Nordam for the first time argues that the solicitation should have contained a provision that allowed alternate products to be offered with the submission of a first article for testing. Any complaint that Nordam had concerning the terms of the solicitation should have been filed prior to the closing date for the submission of initial proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1988). We dismiss this argument as untimely raised.

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel